

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**LEWIS BECERRA,**

**Plaintiff,**

**vs.**

**No. CIV 99-1216 LH/LCS**

**JOHN DANTIS, et al.,**

**Defendants.**

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon Defendants' Motion for Summary Judgment, filed April 25, 2000 (*Doc. 20*). This Court set a briefing schedule on this motion on March 13, 2000 (*Doc. 17*). Plaintiff was ordered to file a response no later than May 26, 2000. As of this date, Plaintiff has not responded to Defendants' Motion for Summary Judgment.

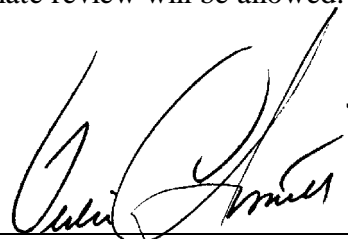
Local Rule D.N.M. LR-Civ. 7.5(b) provides that failure to file a response in opposition to any motion constitutes consent to grant the motion. Accordingly, I propose finding that Plaintiff consents to dismissal of all claims.

I also find that Defendants' motion is well-taken on its merits and should be granted. Plaintiff's civil rights claims under 42 U.S.C. § 1983 are subject to dismissal because he has failed to point to any policy or custom that caused his alleged injury, or any deliberate indifference to his medical needs. *See Board of County Comm'rs v. Brown*, 530 U.S. \_\_\_, 117 S. Ct. 1382, 1388 (1997); *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1986). Plaintiff's state law claims are subject to

dismissal because he has not established that governmental immunity under the New Mexico Tort Claims Act, N.M. Stat. Ann. § 41-4-4, has been waived for his claims.

Recommended Disposition

I recommend that Defendants' Motion for Summary Judgment, filed April 25, 2000 (*Doc. 20*), be GRANTED and that all remaining claims against all remaining defendants be DISMISSED with prejudice. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

---

**LESLIE C. SMITH**  
**United States Magistrate Judge**